

C. DOUGLAS LEE

IBLA 82-799

Decided June 22, 1982

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void.  
A MC 26702 and A MC 20454 through A MC 20458.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), within the prescribed time period is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend

upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: C. Douglas Lee, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

C. Douglas Lee appeals the April 26, 1982, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented Jeep and Jeep Nos. 1 through 5 lode mining claims, A MC 20454 through A MC 20458, and A MC 26702, abandoned and void because the proof of labor for 1981 was not received until January 13, 1982, contrary to the requirements set forth in section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), and 43 CFR 3833.2.

Appellant stated that his partner had handled all paper work relative to the mining claims, but because his partner was hospitalized, he had to see to the filings. He asserts the assessment work was performed and recorded in Cochise County, Arizona, November 2, 1981. He was unaware that the BLM recording had to be accomplished by December 30. Because of his transfer to Redwood City, California, November 2, 1981, his papers relating to the claims were misplaced and he was unable to meet the deadline.

[1] Section 314 of FLPMA requires the owner of unpatented mining claims located prior to October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location, to file with BLM evidence of the assessment work performed on the claim or a notice of intention to hold the claim within 3 years after the date of the Act, i.e., on or before October 22, 1979, and before December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976).

[2] Failure to comply with these requirements is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lawrence Paul, 63 IBLA 275 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant, and this Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, supra.

BLM properly declared appellant's mining claims abandoned and void because no evidence of performance of assessment work was filed with BLM during calendar 1981.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Gail M. Frazier  
Administrative Judge

